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9 As Liquidating Agent For Western Corporate Federal Credit Union

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12 WESTERN DIVISION

13 NATIONAL CREDIT UNION  
14 ADMINISTRATION BOARD AS  
LIQUIDATING AGENT FOR  
15 WESTERN CORPORATE FEDERAL  
CREDIT UNION,

16 Plaintiff,

17 v.

18 ROBERT A. SIRAVO, TODD M. LANE,  
19 ROBERT J. BURRELL, THOMAS E.  
SWEDBERG, TIMOTHY T. SIDLEY,  
20 ROBERT H. HARVEY, JR., WILLIAM  
CHENEY, GORDON DAMES, JAMES  
21 P. JORDAN, TIMOTHY KRAMER,  
ROBIN J. LENTZ, JOHN M. MERLO,  
22 WARREN NAKAMURA, BRIAN  
OSBERG, DAVID RHAMY and  
23 SHARON UPDIKE,

24 Defendants.

Case No.: CV10-01597-GW(MANx)

**ORDER GRANTING  
MOTION OF PLAINTIFF AND  
COUNTERDEFENDANT  
NATIONAL CREDIT UNION  
ADMINISTRATION BOARD AS  
LIQUIDATING AGENT FOR  
WESTERN CORPORATE  
FEDERAL CREDIT UNION TO  
STRIKE AFFIRMATIVE  
DEFENSES IN DEFENDANTS'  
AMENDED ANSWERS**

Date: January 19, 2012  
Time: 8:30 a.m.  
Courtroom: 10

1 Good cause being shown, the Court hereby rules as follows on the motion of  
2 plaintiff the National Credit Union Administration Board as Liquidator for Western  
3 Corporate Federal Credit Union (the “NCUA”) to strike certain affirmative defenses  
4 in the Amended Answers of defendants and counterclaimants Robert A. Siravo and  
5 Thomas E. Swedberg [Docket 190], Timothy T. Sidley [Docket 191], Robert John  
6 Burrell [Docket 192], and Todd M. Lane [Docket 193].

7 A. The Court strikes the following affirmative defenses in their  
8 entirety, without leave to amend:

- 9 (1) Siravo and Swedberg’s First Affirmative Defense of  
10 Ratification, Consent, Approval, Acquiescence, and  
11 Participation by the NCUA, *see* Docket 190, ¶¶ 245-52;  
12 (2) Lane’s Second Affirmative Defense of Consent, Approval,  
13 Acquiescence, Ratification, & Participation by the NCUA,  
14 *see* Docket 193, ¶¶ 246-47;  
15 (3) Siravo and Swedberg’s Third Affirmative Defense of  
16 Business Judgment Rule, Due Diligence and Reasonable  
17 Investigation, *see* Docket 190, ¶¶ 267-68;  
18 (4) Burrell’s Second Affirmative Defense of Business  
19 Judgment Rule, Due Diligence, Reasonable Investigation,  
20 Business Custom and Usage, Candor, Good Faith, *see*  
21 Docket 192, ¶¶ 315-16;  
22 (5) Lane’s First Affirmative Defense of Business Judgment  
23 Rule, Due Diligence & Reasonable Investigation, *see*  
24 Docket 193, ¶ 245; and  
25 (6) Sidley’s Second Affirmative Defense of Business  
26 Judgment Rule, *see* Docket 191, ¶¶ 246-58.

27 B. The Court hereby strikes the following affirmative defenses, but  
28 only to the extent that they assert as affirmative defenses the

1           alleged approval, acquiescence, consent, participation or  
2           ratification of NCUA examiners and supervisory personnel  
3           before the NCUA placed WesCorp into conservatorship in  
4           March 2009:

- 5           (1)   Siravo and Swedberg's Sixth Affirmative Defense of  
6                Reliance on Others (to the extent that it is based on  
7                reliance on "NCUA personnel and examiners"), *see*  
8                Docket 190, ¶¶ 275-76;
- 9           (2)   Sidley's First Affirmative Defense of Consent, Approval,  
10            Acquiescence, Participation, Ratification, *see* Docket 191,  
11            ¶¶ 246-58;
- 12          (3)   Siravo and Swedberg's Seventh Affirmative Defenses of  
13            Apportionment (to the extent that it is based on the fault of  
14            "NCUA personnel and examiners"), *see id.*, ¶¶ 277-78;
- 15          (4)   Burrell's First Affirmative Defense of Consent, Approval,  
16            Acquiescence, Authorization, Ratification (to the extent  
17            that it is based on alleged consent, approval, acquiescence,  
18            authorization, or ratification by the NCUA), including  
19            paragraphs 254-69 in their entirety, *see* Docket 192, ¶¶  
20            247-314;
- 21          (5)   Lane's Sixth Affirmative Defense of Reliance on Others  
22            (to the extent that it is based on reliance on "NCUA  
23            personnel and examiners"), *see* Docket 193, ¶ 251;
- 24          (6)   Lane's Seventh Affirmative Defense of Apportionment (to  
25            the extent that it is based on the fault of "NCUA personnel  
26            and examiners"), *see id.*, ¶ 252; and
- 27          (7)   Sidley's Sixth Affirmative Defense of Reliance on  
28            Professionals and Others (to the extent that it is based on

1 reliance on “NCUA personnel and examiners”), *see id.*, ¶¶  
2 267-68.

3 The Court does not strike these affirmative defenses to the extent that  
4 they assert approval, acquiescence, consent, participation or ratification  
5 by the WesCorp Board of Directors (or committees of that Board), or  
6 directives or guidance to the Officer Defendants made by the WesCorp  
7 Board of Directors (or committees of that Board), or statements made  
8 by the NCUA to the WesCorp Board of Directors (or committees of  
9 that Board) that might have influenced any directives and guidance  
10 given to the Officer Defendants by the WesCorp Board of Directors (or  
11 committees of that Board), or reliance by the Officer Defendants on  
12 people (such as professionals) other than NCUA personnel. By striking  
13 these affirmative defenses, the Court does not preclude the Officer  
14 Defendants from offering evidence of the NCUA’s statements and  
15 conduct to the extent that such evidence is relevant to the issue of  
16 whether the Officer Defendants breached their fiduciary duties, as  
17 alleged by the NCUA.

18 C. The Court strikes the following affirmative defenses with leave to  
19 amend:

- 20 (1) Siravo and Swedberg’s Fifth Affirmative Defense of  
21 Statute of Limitations, *see* Docket 190, ¶¶ 273-74;
  - 22 (2) Burrell’s Seventh Affirmative Defense of Statute of  
23 Limitations, *see* Docket 192, ¶¶ 327-28;
  - 24 (3) Lane’s Fifth Affirmative Defense of Statute of  
25 Limitations, *see* Docket 193, ¶ 250; and
  - 26 (4) Sidley’s Twelfth Affirmative Defense of Statute of  
27 Limitations, *see* Docket 191, ¶¶ 246-58.
- 28

1 D. The Court denies the NCUA's motion to strike as to:

2 (1) Sidley's Eleventh Affirmative Defense of Estoppel,  
3 see Docket 191, ¶¶ 277-78.

4  
5 Dated: March 15, 2012\_



6 The Honorable George H. Wu  
7 United States District Judge

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